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2 Donna T. Parkinson – State Bar Number 125574
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5 Sacramento, CA 95864
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8 E-Mail: tom@parkinsonphinney.com

9 Attorneys for Outback Contractors, Inc.

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 **In re:**

15 **PG&E CORPORATION,**

16 **- and -**

17 **PACIFIC GAS AND ELECTRIC**
18 **COMPANY,**

19 **Debtors.**

- 20 ☐ Affects PG&E Corporation
21 ☐ Affects Pacific Gas and Electric Company
22 ☒ Affects both Debtors
23 * *All papers shall be filed in the Lead Case,*
24 *No. 19-30088 (DM).*

25 **Case No. 19-30088 (DM)**

26 Chapter 11

27 **DECLARATION OF THOMAS R.**
28 **PHINNEY IN SUPPORT OF**
OPPOSITION BY OUTBACK
CONTRACTORS, INC. TO THE
MOTION OF THE OFFICIAL
COMMITTEE OF TORT
CLAIMANTS' TO ESTABLISH
PROCEDURES FOR DISCOVERY
PRECEDING PLAN
CONFIRMATION;

Hearing Date: March 10, 2020

Time: 10:00 a.m.

Place: Courtroom 17
450 Golden Gate Ave., 16th Fl.
San Francisco, CA 94102

29 I, Thomas R. Phinney, declare:

30 1. I am an attorney with Parkinson Phinney, counsel for Alta Mesa 640, LLC
31 (“Buyer”). I make this declaration of my own personal knowledge, and if called upon to
32 testify to the matters stated herein, I would be competent and willing to do so.

33 2. Attached hereto as Exhibit 1 is a true and correct copy of my email exchange
34 with counsel for the TCC relating the TCC’s subpoena to Outback Contractors, Inc. I asked

1 what the basis for the subpoena was. The reply was that the subpoena relates to a contested
2 matter and is based upon the expedited discovery procedures set forth in the court's Case
3 Management Order (Dkt. No. 1996). I have received no other communication from counsel
4 for TCC.

5 3. I replied to the email on January 29, 2020 requesting an extension of time to
6 respond to the subpoena and raising a number of questions about the subpoena. I did not
7 receive a response to the email. In order to not waive objections to the subpoena which are
8 due within 14 days after service of the subpoena, I then served an objection to the subpoena.
9 Attached hereto as Exhibit 2 is a true and correct copy of the subpoena received by Outback
10 Contractors from the TCC.

11 I declare under penalty of perjury that the foregoing is true and correct and that this
12 declaration was executed in Sacramento, California.

13
14 Dated: March 2, 2020

By: /s/ Thomas R. Phinney
Thomas R. Phinney
.

Exhibit 1

From: Tom Phinney
Sent: Wednesday, January 29, 2020 3:17 PM
To: McCabe, Bridget <bmccabe@bakerlaw.com>
Subject: RE: PG&E subpoena- Outback Contractors

Bridget,

Thank you for a copy of the order. I do see a sentence in there toward the end about expedited discovery relating to motions, but I think very unclear if or how that would apply here. I think Outback is entitled to more information that identifies how the subpoena relates to a contested matter. About the Plan, or some other pending contested matter.

I thought the Tort Committee was supporting the Debtor's Plan? So I am confused by what the asserted contested matter is.

This is a complicated and very broad subpoena going back to 2013.

My client contact, who is the one that probably needs to do the main research for this, has very limited availability the next several weeks, and possibly longer. So at a minimum, assuming we resolve objections, Outback would need an extension to respond, **at least 30 days**.

I assume there are strict confidentiality provisions in Outback Contractor's agreements with PG&E. The information also seems sensitive and possibly proprietary as it relates to PG&E, and all the more so as it does not relate to PG&E.

Many of the requests if I read them correctly (e.g., 4, 5, 6, 7) seem to require Outback Contractors to provide the Tort Committee with all of its insurance information whatsoever, regardless of whether it relates to PG&E. I do not see how the Tort Committee could be entitled to ask for that information from Outback Contractors through this subpoena.

Much of the information in the subpoena relates to agreements with PG&E. Have you asked PG&E for this information and they refused?

Will the Committee agree to reimburse the reasonable costs and expenses of responding to this? I don't have a specific proposal about that, my client has not begun investigating this, but Outback is entitled to protection from significant expense, and this subpoena at a minimum is asking for a lot of work to be done.

Regards,

Thomas R. Phinney
Parkinson Phinney
3600 American River Dr., Suite 145
Sacramento, CA 95864
T 916.449.1442 F 916.449.1440 C 916.753.5538
tom@parkinsonphinney.com www.parkinsonphinney.com

From: McCabe, Bridget <bmccabe@bakerlaw.com>
Sent: Wednesday, January 29, 2020 6:07 AM

{338/00001/ALLISON/A0403282.DOCX}

Case: 19-30088 Doc# 5998-1 Filed: 03/02/20 Entered: 03/02/20 12:30:19 Page 4
of 16

To: Tom Phinney <Tom@parkinsonphinney.com>

Cc: Steinberg, Zoe <zsteinberg@bakerlaw.com>; Petre, Timothy P. <tpetre@bakerlaw.com>

Subject: RE: PG&E subpoena- Outback Contractors

Tom,

Thank you for contacting me about the Tort Claimants Committee's subpoena to Outback Contractors and thank you for your patience in waiting for my response.

Regarding the procedural basis for the subpoena, we are in the middle of a contested plan confirmation proceeding, which in a chapter 11 matter such as this, constitutes a contested proceeding under Fed. R. Bankr. P. 9014. The federal rules of discovery apply to all contested matters and Judge Montali has issued an order (attached for reference) outlining the expedited procedures that apply to such discovery in contested matters in these cases. Judge Montali has indicated on the record that the plan confirmation is contested and we have no doubt that he would find discovery of this nature appropriate in this context.

Best,
Bridget

Bridget McCabe
Partner

BakerHostetler

11601 Wilshire Boulevard | Suite 1400
Los Angeles, CA 90025-0509
T +1.310.442.8844

bmccabe@bakerlaw.com
bakerlaw.com



From: Tom Phinney <Tom@parkinsonphinney.com>

Sent: Friday, January 24, 2020 1:18 PM

To: McCabe, Bridget <bmccabe@bakerlaw.com>

Subject: PG&E subpoena- Outback Contractors

[External Email: Use caution when clicking on links or opening attachments.]

Dear Ms. McCabe,

I received a copy of the attached subpoena, and am contacting you on behalf of Outback Contractors. Is there a FRBP 2004 Order? What is this subpoena related to?

Thomas R. Phinney

Parkinson Phinney
3600 American River Dr., Suite 145

{338/00001/ALLISON/A0403282.DOCX}

Case: 19-30088 Doc# 5998-1 Filed: 03/02/20 Entered: 03/02/20 12:30:19 Page 5
of 16

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Internet communications are not assured to be secure or clear of inaccuracies as information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete, or contain viruses. Therefore, we do not accept responsibility for any errors or omissions that are present in this email, or any attachment, that have arisen as a result of e-mail transmission.

Exhibit 2

UNITED STATES BANKRUPTCY COURT

Northern

District of

California

In re PG&E Corporation

Debtor

(Complete if issued in an adversary proceeding)

Case No. 19-30088 (DM)

Chapter 11

Plaintiff

v.

Adv. Proc. No.

Defendant

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT
INSPECTION OF PREMISES IN A BANKRUPTCY CASE (OR ADVERSARY PROCEEDING)

To: Outback Contractors, Inc., c/o Steven B. McCarthy, 100 Rio Street, Red Bluff, CA 96080

(Name of person to whom the subpoena is directed)

☒ **Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attachment Exhibit A

PLACE

Bridget McCabe, C/O JV Killingsworth & Associates, 1422 Oregon Street,
Redding, CA 96001

DATE AND TIME

February 4, 2020, at 1:00 PM PST

☐ **Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

PLACE

DATE AND TIME

The following provisions of Fed. R. Civ. P. 45, made applicable in bankruptcy cases by Fed. R. Bankr. P. 9016, are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and 45(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 1/21/2020

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Bridget S. McCabe

Attorney's signature

Bridget S. McCabe

The name, address, email address, and telephone number of the attorney representing (name of party)
Official Committee of Tort Claimants, who issues or requests this subpoena, are:

Bridget S. McCabe, 11601 Wilshire Blvd., Suite 1400, Los Angeles, CA 90025, bmccabe@bakerlaw.com, (310) 442-8844

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, or the inspection of premises before trial, a notice and a copy of this subpoena must be served on each party before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.** The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013)

EXHIBIT A
DEFINITIONS

1. As used herein, the words "Document" and "Documents" mean each written, typed, printed, recorded, transcribed, taped, electronically stored, digitized, disked, filmed, or graphic matter of every kind, however produced or reproduced, including originals or copies of originals not in existence or available, all drafts or partial copies, wherever located, and including all Electronic Data, correspondence, letters, emails, memoranda, requests for information, reports, studies, tests, inspections, working papers, handwritten notes, diaries, charts, spreadsheets, photographs, sketches, drawings, blueprints, videos, graphs, indices, submittals, data sheets, databases, conversations, statements, minutes, notations (including notes or memorandum of conversations), telephone conversations in whatever form, suggestions, comments, instructions, warnings, notices, manuals, periodicals, pamphlets, brochures, catalogues, bulletins, schedules, invoices, and other documentation.

2. The term "Electronic Data" as used herein, shall be construed as the following types of electronic data and data compilations in the custody and/or control of the party responding to this Subpoena:

a. All electronic mail and information about electronic mail sent or received by the party responding to this Subpoena;

b. All databases containing any reference and/or information;

c. All activity logs on any computer system which may have been used to process or store electronic data containing information;

d. All word processing files and file fragments, including metadata, containing information about the below listed subjects;

e. All electronic data files and file fragments created by application programs that process information requested herein;

f. All electronic data files and file fragments from electronic calendars and scheduling programs that contain information about the below-listed subjects; and

1 g. All audio and video recordings sent, received, or stored by the party
2 responding to this Subpoena that contains, references, or otherwise identifies information about the
3 below listed subjects.

4 3. The terms "and" and "or" as used herein, shall, where the context permits, be
5 construed to mean "and/or" as necessary to bring within the scope of the subpoena request.

6 4. The terms "You" and "Your" refer to the party responding to this Subpoena.

7 5. The term "PG&E" refers to PG&E Corporation and/or Pacific Gas & Electric
8 Company.

9 6. The term "Work" means any activity performed by You in fulfillment of Your
10 duties, contractual or otherwise, to PG&E.

11 7. The term "Communication(s)" means any transmission of information from one
12 person or entity to another, including (without limitation) by personal meeting, conference,
13 conversation, telephone, radio, electronic mail, teleconference, or any other method of
14 communication or by any medium.

15 8. The term "Fires" means the fires that occurred in Northern California in 2015,
16 2017 and 2018 listed below:

- 17 1. Butte Fire (2015)
- 18 2. North Bay Wildfires (2017)
 - 19 a. 37
 - 20 b. Adobe
 - 21 c. Atlas
 - 22 d. Blue
 - 23 e. Cascade
 - 24 f. Cherokee
 - 25 g. Honey
 - 26 h. LaPorte
 - 27 i. Lobo
 - 28 j. Maacama / Youngs

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- k. McCourtney
- l. Norrbom
- m. Nuns
- n. Partrick
- o. Pocket
- p. Point
- q. Pressley
- r. Pythian / Oakmont
- s. Redwood / Potter Valley
- t. Sullivan
- u. Sulphur
- v. Tubbs

3. Camp Fire (2018)

REQUEST FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

All Documents that constitute and/or memorialize any and all contracts and/or work agreements between You and PG&E, for the time period 2013 to the present.

REQUEST FOR PRODUCTION NO. 2:

All Documents that constitute and/or memorialize, any and all indemnification and/or hold harmless agreements between You and PG&E, for the time period 2013 to the present.

REQUEST FOR PRODUCTION NO. 3:

All Documents that constitute and/or, memorialize any and all reports, analyses, summaries, or descriptions of Your work for PG&E, for the time period 2013 to the present.

REQUEST FOR PRODUCTION NO. 4

All Documents that constitute and/or, memorialize Commercial General Liability insurance policies, including but not limited to all applications, declarations, policies and endorsements, for which You are an insured, for the time period 2013 to the present. Included in this request are all such policies whether insuring You alone, or You as well as others.

REQUEST FOR PRODUCTION NO. 5:

All Documents that constitute and/or, memorialize Errors & Omissions/Professional Liability insurance policies, including but not limited to all applications, declarations, policies and endorsements, for which You are an insured, for the time period 2013 to the present. Included in this request are all such policies whether insuring You alone, or You as well as others.

REQUEST FOR PRODUCTION NO. 6:

All Documents that constitute and/or, memorialize Directors & Officers insurance policies, including but not limited to all applications, declarations, policies and endorsements, for which You are an insured, for the time period 2013 to the present. Included in this request are all such policies whether insuring You alone, or You as well as others.

REQUEST FOR PRODUCTION NO. 7:

All Documents that constitute and/or, memorialize Environmental/Pollution Liability insurance policies, including but not limited to all applications, declarations, policies and

endorsements, for which You are an insured, for the time period 2013 to the present. Included in this request are all such policies whether insuring You alone, or You as well as others.

REQUEST FOR PRODUCTION NO. 8:

All Documents that constitute and/or, memorialize insurance policies, not otherwise produced in response to Request Nos. 4-7, that You were contractually required to maintain pursuant to any contracts You had with PG&E, including but not limited to all applications, declarations, policies and endorsements, for which You are an insured, for the time period 2013 to the present. Included in this request are all such policies whether insuring You alone, or You as well as others.

REQUEST FOR PRODUCTION NO. 9:

All Documents that constitute and/or, memorialize other insurance policies, not otherwise produced in response to Requests 4-8, that provide defense coverage, indemnity, and/or other coverage of claims arising from or related to Your services or acts, including but not limited to all applications, declarations, policies and endorsements, for the time period 2013 to the present. Included in this request are all such policies whether insuring You alone, or You as well as others.

REQUEST FOR PRODUCTION NO. 10:

All Documents that constitute, refer or relate to notices of claims, tenders and coverage Communications—including but not limited to coverage positions and insurance analyses—between You and any insurers for all such insurance policies subject to Request Nos. 4-9, for the time period 2013 to the present related, directly or indirectly, to the Fires and/or Your Work for PG&E.

REQUEST FOR PRODUCTION NO. 11:

All Documents that constitute, refer or relate to notices of claims, tenders and coverage Communications—including but not limited to coverage positions and insurance analyses—between You and any insurance brokers or agents for all such insurance policies subject to Request Nos. 4-9, for the time period 2013 to the present related, directly or indirectly, to the Fires and/or Your Work for PG&E.

REQUEST FOR PRODUCTION NO. 12:

All Documents that constitute, refer or relate to notices of claims, tenders and coverage Communications—including but not limited to coverage positions and insurance analyses—between You and any insurers for all such insurance policies subject to Request Nos. 4-9, for the time period 2013 to the present related to work that You performed for any entity other than PG&E but that was the same or similar in nature to the Work you performed for PG&E.

REQUEST FOR PRODUCTION NO. 13:

All Documents that constitute, refer or relate to notices of claims, tenders and coverage Communications—including but not limited to coverage positions and insurance analyses—between You and any insurance brokers or agents for all such insurance policies subject to Request Nos. 4-9, for the time period 2013 to the present related to work that You performed for any entity other than PG&E but that was the same or similar in nature to the Work You performed for PG&E.

REQUEST FOR PRODUCTION NO. 14:

All Documents constituting, memorializing, or reflecting any payment of Your defense costs and/or indemnity and/or ultimate net loss, however it may be defined by any given policy, made by each insurance carrier subject to Request Nos. 4-9 for the time period 2013 to the present.

REQUEST FOR PRODUCTION NO. 15:

All Documents constituting, memorializing, or reflecting insurance policy limits remaining available for payment of covered claims under each policy where an insurance carrier has made a payment subject to Request No. 14.